Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte THOMAS A. HARPER,
VALDEMAR GARZA JR. and
PHILIP R. MEAD

_____

Appeal No. 96-1921
Application 08/225,158[1]

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ON BRIEF
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Before THOMAS, KRASS, and JERRY SMITH, Administrative Patent
Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of

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[1]   Application for patent filed April 8, 1994. According
to appellants, this application is a division of Application
07/830,435, filed January 30, 1992.

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claims 10 and 11, the only claims remaining in the

application.

The invention pertains to a bypass send and receive

optimizer method for VTAM processes. Computer network data

traffic is reduced by bypassing a collection of computer

program routines and macros, known as Virtual

Telecommunications Access Method (VTAM), during certain

communications between two processes so as to provide

significant savings of system resources and improved execution

speed over that required for VTAM to process the same

communication, i.e., SEND and RECEIVE requests, between

processes. The bypass is achieved, in part, by modifying the

RECEIVE request's request-parameter-list portion to include

the address of a buffer memory where the SEND request's data

is stored.

Independent claim 10, reproduced as follows, clearly

explains the invention:

10. A Bypass Send and Receive method, executed by a
machine which is also executing (1) a communications program
VTAM, (2) a first application program, and (3) a second
application program, for converting an outgoing data stream
from the first application program to an incoming data stream
for the second application program, said Bypass Send and

Receive method comprising:

   (a) receiving a SEND request from the first
application program, said SEND request having a data portion
     representing an outgoing data stream;

   (b) receiving a RECEIVE request from the second
   application program, said RECEIVE request having a
request- parameter-list portion;

   (c) storing the SEND request's data portion in a
buffer memory, said buffer memory having an address;

   (d) notifying the first application program that the
  SEND request is completed;

   (e) converting the outgoing data stream to an
incoming   data stream by modifying the RECEIVE request's
request- parameter-list portion to include the address of the
buffer memory; and

   (f) notifying the second application program that
the   RECEIVE request is completed.

  The examiner relies on the prior art Figures 1B, 6 and 8
of the instant disclosure.

  Claims 10 and 11 stand rejected under 35 U.S.C. § 102(a)
or (b) as anticipated by the prior art "detailed in the
textual portions of the specification and figures of this
application" [answer-page 3].

  Reference is made to the briefs and answer for the
respective positions of appellants and the examiner.

OPINION

We reverse.

The examiner clearly has not made out a <u>prima facie</u> case of anticipation of the instant claimed subject matter.

While the examiner points to Figures 6 and 8 as admitted prior art in the disclosure as evidence of anticipation of the claimed subject matter, it is clear that Figure 6 refers to a flow diagram of a prior art VTAM SEND event while Figure 8 relates to a flow diagram of a prior art VTAM RECEIVE event. However, the instant claims are clearly directed to bypassing the VTAM. There is no indication of any bypassing of the VTAM in the prior art figures cited by the examiner.

The examiner's response to this argument made by appellants is to indicate that the claims are somehow not directed to any bypassing process since "the claims are silent as to what is being bypassed or who or what is doing the bypassing or not doing the bypassing" [answer-page 5].

We agree with appellants that independent claim 10 is very clear and specific as to the bypass operation. The preamble of the claim indicates that we are concerned with a

"Bypass Send and Receive method." Further, the preamble

indicates that a machine is executing three programs: 1. A

communications program VTAM. 2. A first application program.

3. A second application program. The preamble also indicates

that the Bypass Send and Receive method includes converting an

outgoing data stream from the first application program to an

incoming data stream for the second application program.

Thus, if we have three programs being executed, the recitation

of communication between two of them, and a recitation of a

bypass, it is clear that the third program, not a party to the

communication, i.e., the communications program VTAM, must be

the program being bypassed. Accordingly, in response to the

examiner's queries, the claims are not silent as to what is

being bypassed, it is the communications program VTAM which is

being bypassed and, as to "what" is performing the bypassing,

the claim is a method claim and need not recite specific

structure. However, reference to the specification, at pages

16 et seq., and Figures 9 and 11, for example, clearly detail

a session manager program UOV which intercepts an OPEN

instruction from an application APPL, the application APPL

issuing the instruction intending it to be processed by VTAM,
and causes the method set forth in claim 10 to be carried out,
bypassing VTAM.

Since the prior art referenced by the examiner relates to
VTAM, while the instant claims are directed to bypassing VTAM,
there is no anticipation of the instant claimed invention by
the cited prior art. More specifically, we find nothing in
the prior art cited that suggests step (e) of the method
recited in claim 10. There is no conversion, in the prior art
cited, of the outgoing data stream to an incoming data stream
by modifying the RECEIVE request's RPL portion to include the
address of the buffer memory where the SEND request's data
portion is stored.

Accordingly, the examiner's decision rejecting claims 10
and 11 under 35 U.S.C. § 102(a) or (b) is reversed.

<u>REVERSED</u>

James D. Thomas   )
Administrative Patent Judge   )
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)
Errol A. Krass   ) BOARD OF
PATENT
Administrative Patent Judge   )   APPEALS AND
)   INTERFERENCES
)
)
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